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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,315	12/23/2004	Gunter Hrazdjira	HRAZDJIRA-1 PCT	9094
25889	7590	09/17/2008		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER SPAHN, GAY	
			ART UNIT	PAPER NUMBER
			3635	
			MAIL DATE	DELIVERY MODE
			09/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,315	Applicant(s) HRAZDJIRA, GUNTER	
	Examiner Gay Ann Spahn	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05 September 2008 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over TELLER (U.S. Patent No. 2,764,783) in view of BEASLEY (U.S. Patent No. 6,148,568) in view of RAY (U.S. Patent No. 5,365,704).

As to claim 1, TELLER discloses an area (Fig. 1) for sales and presentations (the structure of TELLER is capable of performing this intended use) having an outer region (10) for sales and presentation (the structure of TELLER is capable of performing this intended use) and an inner region (12) for sales and presentations (the structure of

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TELLER is capable of performing this intended use) which are arranged in such a way that an essentially annular region (11) is defined between said outer and inner regions (10, 12) for sales and presentation regions (the structure of TELLER is capable of performing this intended use), wherein said annular region (11) is rotatably mounted in the horizontal direction and rotates at a rotational speed.

TELLER fails to explicitly disclose that the outer diameter of the annular region is limited to a maximum rotational speed of 2.5 cm/sec, the annular region is divided into ring segments, and a lifting and lowering device is provided over which said ring segments slide in the course of the rotational movement of said annular region and on which said ring segments rest during a standstill of said annular region for moving said ring segments in the vertical direction.

BEASLEY discloses an annular region divided into ring segments (22).

RAY discloses a lifting and lowering device (columns 61, 61, 61 of lift assembly 55) which raise and lower floor segments (32, 34).

It is well settled that changes in size/proportion (i.e., dimensions) do not constitute a patentable difference. See *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), wherein the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. See also, *Hobbs v. Wisconsin Power and Light Company et al.*, 115 USPQ 371 (CA 7

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1957), which states that “[g]enerally, it is not invention to change size or degree of thing or of any feature or function of machine or manufacture; there is no invention where change does not involve different concept, purposes, or objects, but amounts to doing same thing substantially the same way with better results.” See also, *The Ward Machinery Company v. Wm. C. Staley Machinery Corporation*, 192 USPQ 505 (DC MD 1976), which states that “[i]mprovement resulting from change in size, proportion, or degree of element contained in prior art, no matter how desirable or useful, does not constitute patentable.”

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the area capable of sales and presentations of TELLER by: (1) making the essentially annular region be divided into ring segments as taught by BEASLEY in order to be able to more easily move the ring segments for repairs and refurbishments than the entire annular floor; (2) including a lifting and lowering device to raise and lower the floor segments as taught by RAY in order that the ring segments slide over the lifting and lowering device in the course of the rotational movement of the annular region and rest on the lifting and lowering device during a standstill of the annular region so that the ring segments for moving the ring segments in the vertical direction so that the floor ring segments may be changed for different activities to be conducted on the annular region as well as for refurbishment and repair; and (3) making the outer diameter of the annular region be limited to a maximum rotational speed of 2.5 cm/sec in order to make the annular region not rotate too fast such as to be uncomfortable or dangerous to users of the sales and presentation area and because

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changes in size/proportion (i.e., dimensions) do not constitute a patentable difference and are not unobvious.

As to claim 3 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), TELLER in view of BEASLEY and RAY discloses the area for sales and presentations of claim 1 as discussed above, and the resulting area for sales and presentations from the combination of TELLER in view of BEASLEY and RAY also discloses that rooms (14, 16, etc. of RAY), into which the ring segments (11 of TELLER divided into ring segments 22 as taught by BEASLEY) may be pushed in the radial direction if the lifting and lowering device (columns 61, 61 of lift assembly 55 of RAY) is correspondingly lowered, are provided below the inner and outer regions (12, 10 of TELLER) for sales and presentations.

As to claim 4 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), TELLER in view of BEASLEY and RAY discloses the area for sales and presentation of claim 1, and the resulting area for sales and presentation from the combination of TELLER in view of BEASLEY and RAY also discloses that said rooms (14, 16, etc. of RAY), into which the ring segments (22 of BEASLEY) may be pushed in the radial direction if the lifting and lowering device (columns 61, 61 of lift assembly 55 of RAY) is correspondingly lowered, are positioned one below another under the inner and outer regions (12, 10 of TELLER) for sales and presentations.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over TELLER (U.S. Patent No. 2,764,783) in view of BEASLEY (U.S. Patent No. 6,148,568) in view of RAY (U.S. Patent No. 5,365,704), as applied to claim 1 above, and further in view of GILBERT (U.S. Patent No. 2,182,757).

As to claim 6 (and as best understood despite the 35 U.S.C. § 112, second paragraph, indefiniteness discussed above), TELLER in view of BEASLEY and RAY discloses the area for sales and presentations of claim 1.

None of TELLER, BEASLEY, and RAY explicitly disclose a second area for sales and presentations located adjacent to the first area for sales and presentations, said second sales and presentation area having an associated second lifting and lowering device, and the respective annular region of each of the first and second areas for sales and presentations nearly touching the respective lifting and lowering device.

GILBERT discloses first and second areas for sales and presentations both having rotating annular regions (12, 13 in Fig. 3) that nearly touch.

It is well settled that a duplication of parts does not constitute a patentable difference. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a “web” which lies in the joint, and a plurality of “ribs” projecting outwardly from each side of the web into one of the adjacent concrete slabs. The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a

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plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the area for sales and presentation of TELLER in view of BEASLEY and RAY by: (1) including a second area for sales and presentations by a duplication of parts in order to be able to simultaneously perform different sales and presentations in the second area than are being performed in the first area for sales and presentations and because a duplication of parts does not constitute patentable difference as not being unobvious; and (2) making the second area for sales and presentations be located adjacent the first area for sales and presentations so that rotating annular regions nearly touch as taught by GILBERT in order to create a visually pleasing and interesting design for users to be able to go in whichever first or second area for sales and presentations that interests them.

Response to Arguments

Applicant's arguments with respect to claims 1, 3, 4, and 6 filed 08 September 2008 have been fully considered but they are not persuasive.

On the bottom of page 8 of the "Preliminary Amendment in RCE" filed 08 September 2008, Applicant argues that the newly added limitation of "with the outer diameter of the annular region being limited to a maximum rotational speed of 2.5 cm/sec" makes clear that the rotating ring segments are designed for use during permanent rotation.

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The examiner disagrees and notes that in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "that the rotating ring segments are designed for use during permanent rotation") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On the bottom of page 10, Applicants argue that:

None of the cited references discloses or suggests a sales and presentation area having an essentially annular region defined between an outer sales and presentation region and the inner sales and presentation region that is rotatably mounted in the horizontal direction with the outer diameter of the annular region being limited to a maximum rotational speed of 2.5 cm/sec and divided into ring segments as recited in claim 1 as amended or teaches the benefits that accrue from that structure.

Then, in the first full paragraph on page 11 through the top of page 14, Applicants discuss the references to TELLER, BEASLEY, RAY, and GILBERT individually, but never discusses the references in combination.

Based on the foregoing, the examiner is maintaining her rejections of claims 1, 3, and 4 as being obvious over TELLER in view of BEASLEY and RAY.

Applicant's arguments with respect to claim 6 have been considered but are moot in view of the new ground(s) of rejection (i.e., TELLER in view of BEASLEY, RAY and GILBERT individually, but never addresses the examiner's combination of the references.

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In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner notes that both TELLER and BEASLEY disclose rotating annular regions and the annular regions are rotate at a rotational speed. The rotational speed is a function of the size of the annular region to be rotated, the weight, etc. Therefore, it would be well within the knowledge of one or ordinary skill in the art to maximize the rotational speed of the rotating annular region.

Based on the foregoing, the examiner is maintaining her 35 U.S.C. 103(a) rejections of claims 1, 3, 4, and 6.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on (571)-272-6777. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gay Ann Spahn/
Gay Ann Spahn, Patent Examiner
September 11, 2008